

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By **CHAIRMAN CINDY YOUNKIN**, on January 19, 2001 at 3:00 P.M., in Room 152 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Cindy Younkin, Chairman (R)  
Rep. Rick Dale, Vice Chairman (R)  
Rep. Gail Gutsche, Vice Chairman (D)  
Rep. Keith Bales (R)  
Rep. Rod Bitney (R)  
Rep. Dee Brown (R)  
Rep. Gilda Clancy (R)  
Rep. Aubyn A. Curtiss (R)  
Rep. Larry Cyr (D)  
Rep. Bill Eggers (D)  
Rep. Ron Erickson (D)  
Rep. Christopher Harris (D)  
Rep. Linda Holden (R)  
Rep. Joan Hurdle (D)  
Rep. Rick Laible (R)  
Rep. Jeff Laszloffy (R)  
Rep. Douglas Mood (R)  
Rep. Bob Story (R)  
Rep. David Wanzenried (D)

**Members Excused:** Rep. Brett Tramelli (D)

**Members Absent:** None.

**Staff Present:** Holly Jordan, Committee Secretary  
Larry Mitchell, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 135, 1/4/2001; HB 147,  
1/4/2001  
Executive Action: HB 166; HB 94

**HEARING ON HB 147**

**Sponsor:** REP. RICK DALE, HD 39, Whitehall

**Proponents:** Jan Sensibaugh, DEQ  
Jim Mockler, Montana Coal Council

**Opponents:** None.

**Opening Statement by Sponsor:**

*{Tape : 1; Side : A; Approx. Time Counter : 1.3}*

REP. RICK DALE, HD 39, Whitehall, stated this bill applies to surface and underground coal mining in Montana. The intent of the bill is to make the process work better. He passed out some proposed amendments **EXHIBIT**(nah15a01).

**Proponents' Testimony:**

*{Tape : 1; Side : A; Approx. Time Counter : 3.8}*

Jan Sensibaugh, DEQ, submitted written testimony **EXHIBIT**(nah15a02).

Jim Mockler, Montana Coal Council, stated that he supports the bill and the proposed amendments and hoped for a do pass.

**Opponents' Testimony:** None.

**Questions from Committee Members and Responses:**

*{Tape : 1; Side : A; Approx. Time Counter : 9.5}*

REP. ERICKSON asked Jan Sensibaugh to lead the committee through the amendments. The request was deferred to **Steve Welch, DEQ**, who stated that there was some discussion on the way this bill was originally proposed. Originally the statute required an EIS to be prepared within 365 days of the completeness of the termination. Then you have 120 days after the completeness to determine acceptability. In the amendments we moved the 365 days for publishment of the final EIS to acceptability meaning that, we had a document that was essentially ready to approve or deny, we had a year from that point in time to prepare the Environmental Impact Statement. We tried to figure out a way that it would make it such that the process worked as it was intended so that when you were preparing the EIS you were, at the same time, reviewing the data so that you have a parallel

movement. The amendments would remove that 365 days totally and now we are asking that the EIS be completed 15 days prior to the date upon which written findings are prepared and they are prepared 45 days after we determine acceptability. Followup by **REP. ERICKSON** please go over the 45 days and 15 days again. **Mr. Welch** stated 45 days after acceptability we are required to prepare written findings, prior to that we are required to submit the final EIS to the governor's office and to the public and that is to be used in assisting and documenting our written findings also. Followup - What day do you start the EIS? **Mr. Welch** stated that the EIS really could be started when the application comes in the door, we are not required to make that decision on an EIS until 90 days after it's complete and you could be doing an environmental assessment during those 90 days. **REP. ERICKSON** requested that the department, before executive action, give the committee a chart that would lay out some of these timings. **Mr. Welch** stated he would do that.

**REP. GUTSCHE** asked **Mr. Welch** how many days does the department have to finish the EIS? **Mr. Welch** stated that now there would be no specific date upon which it would be required. Now you have the additional 90 days to determine completeness, you have 120 beyond that to determine acceptability and then 45 days to do the written findings. If each one of those phases were carried out to the end of the statutory time frame then you would have 240 days total. Followup - is there a limit on the number of days it could take, is it just open ended? No, it has to be tied to the date of acceptability and the date of written findings. Once it's declared complete we have 120 days to determine if it's acceptable. If it is acceptable then there are 45 days beyond that to make a record of decision of written findings.

**Closing by Sponsor:**

***{Tape : 1; Side : A; Approx. Time Counter : 19}***

**REP. DALE** stated that the process is improved by this bill, with the amendments, it's improved for everybody, it assures that the frustration and mistrust that historically has been a part of this process doesn't have a chance to build. This bill would encourage the development of new coal mines by not jeopardizing a large investment that they would have to make with no say so in the process. He urged the committee's support.

**HEARING ON HB 135**

**Sponsor:** **REP. STAN FISHER, HD 75, Bigfork**

**Witnesses:** **Peggy Trenk, Montana Realtors**

Bud Clinch, DNRC  
Jim Walther, Montana Department of Transportation  
Sandi Olsen, Department of Environmental Quality  
David Dittloff, Montana Wildlife Federation  
Randy Wilke, Montana Department of Revenue

**Opening Statement by Sponsor:**

***{Tape : 1; Side : A; Approx. Time Counter : 20.7}***

**REP. STAN FISHER, HD 75, Bigfork,** stated that the bill has to do with surplus property the state owns. He stated that since the draft of the bill a lot of questions have come up. He stated that he would like to have the bill redrafted and have the Department of Transportation excluded from the bill. He would also like to rephrase the title of the bill to where the property involved would be inventoried and sold. He then explained the purpose of the bill. He then asked the committee if he could resubmit the bill to the committee after it is redrafted.

**REP. YOUNKIN** then asked if there were people in the room to testify on the bill. There were so she stated that a hearing needed to be held as it was noticed and people were there for that.

**REP. FISHER** stated that after several changes the bill will be quite a bit different. He would like to have the bill redrafted and then resubmit it to the committee.

**REP. STORY** stated that most of the people in the room probably want changes to the bill and they should be allowed the opportunity to state those changes. He suggested that the hearing go on and then the bill can be submitted to a subcommittee who can amend it at that time.

**REP. YOUNKIN** stated that, in light of the significant changes projected, the hearing will not be held with proponents and opponents, the committee will just hear from anyone who has comments on the bill.

**Witnesses' Testimony:**

***{Tape : 1; Side : A; Approx. Time Counter : 26.9}***

**Bud Clinch, DNRC,** stated that DNRC is interested in this bill for a variety of reasons. It provides a conduit to implement some activities that DNRC has been directed to do by the legislative council. Legislative council has directed the DNRC to do an inventory which is a massive undertaking because many agencies

don't have good data about what they do own. He stated that school trust lands are exempted from this bill as it is and as it is intended to be amended. The bill, as it is drafted now, constitutes a sale process as well and through discussions there is some consensus of how to modify that. The DNRC has agreed to work closely with **REP. FISHER** to encapsulate the agreement that was reached by the various agencies and to help him and the drafters to get this bill into the shape to do the activities that were agreed upon.

**David Dittloff, MWF**, stated that many of these unused parcels of land owned by other agencies could provide public access to other lands and a wildlife habitat. He stated that he will wait to decide if MWF is a proponent or opponent after the bill is amended or redrafted.

**Jim Walther, MDT**, stated that the bill will have no impact on the MDT if it is amended as agreed to. As drafted the bill does cause the MDT some problems that are captured in the fiscal note. He stated, most of the MDT lands were purchased with federal funds in conjunction with the Federal Highway Administration. By agreement with FHWA, MDT can sell these excess lands provided that they put the proceeds back into transportation issues. There is currently a program in place where there is an inventory taken of excess land and it is sold. The proceeds from the sale of these lands go into the State Special Revenue Fund. Under HB 135 MDT would be required to give these lands to the DNRC. They would then sell the land and the proceeds would go to a trust fund at the board. Therefore, MDT would not only lose the asset, they may be required to repay the Federal Highway Administration for the land. Another issue is the time frame in which an inventory is required. As amended, if the bill is amended as proposed, MDT does not have any comment on this bill.

**Randy Wilke, MDR**, stated the MDR's contribution to this bill is contained in the appraisal of the surplus land. He stated that MDR has offered some amendments that would delete references to county assessors doing evaluations.

**Bud Clinch, DNRC**, stated that since this bill has numerous references to DNRC and the Land Board and sets up a process. He wanted to clear up that this bill was not drafted by request of the DNRC.

**Questions from Committee Members and Responses:**

***{Tape : 1; Side : A; Approx. Time Counter : 40.1}***

**REP. LAIBLE** asked **Mr. Walther** to go over why the proceeds from land that was bought with taxpayer dollars have to go back into the department and why it does not go back into the general fund. Also, does MDT have a fund that excess capitol goes into that comes out of this program? **Mr. Walther** stated in general, a large portion of our transportation system is purchased with federal aid highway dollars. Typically there is 15% state special revenue or gas tax dollars in the highway program and 85% federal aid dollars. If MDT were to resell excess land that was purchased under that combination they would be obligated to pay back the 85%. The reason MDT feels that it should go back into the state special revenue is that this money was paid by the taxpayers, through the gas tax, for transportation purposes. It would go back into our funding mechanism to match federal aid highway dollars. He then answered, in reference to a fund, I was referring to the state special revenue fund. **REP. LAIBLE** followed up asking how much money is in that special revenue fund. **Mr. Walther** deferred the question to **Gary Gilmore, MDT**, who stated that the fund "floats" it collects gas tax daily and money is spent daily. An approximate figure is \$8,000,000 to \$10,000,000.

**REP. ERICKSON** asked **Mr. Clinch** if the proposed amendments would fit within the title or if the committee would get a different idea out of this. **Mr. Clinch** stated that the title fulfilled the requirement for the bill as it exists. The bill, as it is going to be amended, will not have anything new in terms of practices. The amendments, as agreed upon, will strike out the MDT, and focus on the inventorying of lands. Followup - the title does not talk about inventory, the title talks about sale. **Mr. Clinch** stated that he sees that as well but that is the title of this bill and section 4 of this bill, as drafted, is titled "inventory", it may have been an oversight not to include inventory in the title. The question was redirected to **Larry Mitchell** who stated that the constitutional provisions about the title state that no bill may be amended such as the purpose of the bill is changed. He stated that he is not an attorney or the gate keeper of that decision but he did assure the committee that Mr. Petesch will advise the drafter whether or not the amendments fit within the title of the bill.

**REP. FISHER** stated that the MDT will be taken out of the bill so his testimony will have no consequence on this bill. The title will say the inventory and sale.

**REP. GUTSCHE** asked **REP. FISHER** if sales will be removed from the bill? **REP. FISHER** stated it is important to keep sales in the bill. The bill speaks only of property of 200 acres or less,

these are small parcels that nobody has a handle on at present time.

**REP. GUTSCHE** asked **MR. Clinch** if he has any idea how many parcels may be out there or how much total acreage we may be looking at. **Mr. Clinch** stated there are several thousand parcels. There are a wide variety of properties, an unused job service building, abandoned armory, etc. Followup - so are most of these parcels developed property or public access, undeveloped property or do you know? **Mr. Clinch** stated that he does not know the answer to that.

**REP. MOOD** asked **REP. YOUNKIN** if it is her intention to open this bill to questions again once we have the final bill? **REP. YOUNKIN** stated that she would anticipate that.

**REP. MOOD** asked **REP. FISHER** if the open, undeveloped lands were originally private lands? **REP. FISHER** stated that he does not know. He gave a background on why he pursued this bill.

**REP. MOOD** asked **Mr. Clinch** if this will be approved by the land board. **Mr. Clinch** stated that the bill, as drafted now, does contemplate that process. Followup - if the lands are sold the money will go into a fund within your department, is that correct? **Mr. Clinch** stated that as the bill is currently structured the money goes into a fund of which some amount of it would be assigned ... deferred to **REP. FISHER** who read page 4, lines 2-14 of the bill to clarify this.

**REP. HARRIS** asked **Mr. Clinch** has there been any consideration of offering the land to the county that may have interest in it? **Mr. Clinch** stated that there is already a provision in statute that allows for the transfer of that property to another government entity. **REP. HARRIS** then asked if that statute will be referenced or incorporated into this bill. **Mr. Clinch** stated that it could be referenced. **REP. HARRIS** then asked what the need for real estate brokers is. **Mr. Clinch** stated that the question may be better answered by the sponsor. **REP. HARRIS** then asked **Mr. Clinch** if the state needs a 50% mineral interest in these properties. **Mr. Clinch** stated he does not think there is any statutory requirement of that but you may want to ask the sponsor about that. School Trust Lands, which are not included in this, have a mandate that the state cannot dispose of the minerals. Followup - on wildlife habitat, do you have any objection to inventorying of the land include an assessment of whether this would have wildlife habitat or have access to public lands. **Mr. Clinch** stated that he would have no objection to that. **REP. HARRIS** then asked about the unfunded mandate laws

being superseded by this. **{Tape : 1; Side : B; Approx. Time Counter : 1.5}** Mr. Clinch stated that the sponsor could best answer this.

**REP. HARRIS** asked **Mr. Walther** whether there are MDT lands which are not constrained by the federal interaction. **Mr. Walther** stated yes there is, the department owns a variety of lands. The way the department has obtained lands over the years has been varied in many ways. Followup - Does the contemplated amendment exempt MDT lands entirely? **Mr. Walther** stated if they are exempted out of the bill they have not comment on it whatsoever. **REP. HARRIS** then asked if the department would have any objection for the non-federal implicated lands to be part of this bill. **Mr. Walther** stated that he believes there would be an objection.

**REP. CURTISS** asked **Mr. Clinch** have you already budgeted MDT out, will we be getting a new fiscal note? **Mr. Clinch** stated that there will be a new fiscal note.

**REP. STORY** asked **REP. FISHER** if he serves on the appropriations committee. **REP. FISHER** answered yes. **REP. STORY** then noted page 4, lines 13 & 14, subsection c, of the bill. He then asked if the appropriations committee gives anyone in government that kind of authority (mentioned on page 4, lines 13 & 14, subsection c) to take whatever money they have and decide how to spend it. **REP. FISHER** stated absolutely not but the land board is different. Followup - there may be a constitutional infringement in this section and I think it needs a little work.

**REP. FISHER** commented on **REP. HARRIS'** questions about giving the property to another agency, stating the bill will contain a clause that says it can be given to another public entity.

**REP. YOUNKIN** stated on page 4, line 7, "implementing and administering (sections 1 through 9) for fiscal years 2001 and 2002," the 2001 fiscal year will end probably 2 months after this bill takes effect, if it gets out of here, so you might want to take 2001 out of there and adjust your effective dates a little bit too. **REP. FISHER** stated that it is intended that this bill will take immediate affect.

**Closing by Sponsor:**

**{Tape : 1; Side : B; Approx. Time Counter : 11}**

**REP. FISHER** stated that the bill is going to be changed but the concept will not change. He stated that this bill will help every county in putting property back on the tax rolls.



**EXECUTIVE ACTION ON HB 166**

***{Tape : 1; Side : B; Approx. Time Counter : 13}***

**Larry Mitchell** passed out an amendment on this bill  
**EXHIBIT** (nah15a03).

**REP. YOUNKIN** explained that HB 166 was moved as "do pass" the other day and postponed to develop a substitute amendment.

**Motion:** **REP. STORY** moved that the substitute amendment on HB 166 do be adopted.

**Discussion:** **REP. GUTSCHE** asked **Larry Mitchell** to explain the (ii) in the amendment. **Mr. Mitchell** stated that this was to attempt to provide the current owner of the property, on which the site is located, to have the right of first refusal if the property were to be sold. It gets around the difficulty of what happens if the property is subdivided into 14 different parcels, each of which may touch a portion of that wetland mitigation site but, none of which really owns the original piece of property from which it was separated, who then would have the right of first refusal. Followup - in looking at the original amendment the (ii) stated that it was the landowner who originally sold the wetland and there wasn't discussion around that of whether it should be the current land owner or if it should go back. To me this doesn't cover what the other amendment did. **REP. YOUNKIN** stated that the problem with the land owner that originally sold the site makes that personal to that person, it does not run with the title of the property and the person who originally sold the wetland may be gone. This amendment is to try to protect the title owner, subsequent land owner, of that property.

**REP. DALE** asked **Mr. Mitchell** why the comma was taken out of private, nonprofit. **Mr. Mitchell** stated because no one could tell what a private was, it was an erroneous comma in the first place.

**REP. WANZENREID** stated that he does not understand the language.

**REP. BALES** stated that he does not understand (ii) either and asked **Mr. Mitchell** to explain. Is it the landowner who owns the property from which the piece was sold that has the right? **Mr. Mitchell** stated that is the intent. **REP. YOUNKIN** then responded also with an example.

**REP. STORY** stated that whoever owns property from which a parcel was sold for a wetland easement, whoever owns that section of property where the parcel came from has the right to first refusal.

**REP. ERICKSON** asked if it is subdivided into 14 different sections whose property is it? **REP. STORY** stated that that's why we have lawyers. A lot of unforeseeable problems could come from this.

**REP. WANZENREID** asked if the sponsor has reviewed the amendments. He was told yes by **REP. ERICKSON**.

**Vote:** Motion do adopt amendments for HB 166, **carried 19-1 with Wanzenried voting no.**

**Motion/Vote:** **REP. ERICKSON** moved that **HB 166 DO PASS AS AMENDED.** Motion carried unanimously.

#### EXECUTIVE ACTION ON HB 94

*{Tape : 1; Side : B; Approx. Time Counter : 30}*

**Motion:** **REP. GUTSCHE** moved that **HB 94 DO PASS.**

**Discussion:** **REP. BROWN** asked if on page 1, line 22, was the word "a" changed to "any". **REP. YOUNKIN** stated that was proposed as an amendment.

**Motion/Vote:** **REP. BROWN** moved that HB 94 be amended so that on page 1, line 22, the word "a" would be changed to "any". **Motion carried unanimously.**

**REP. BROWN** then asked about page 5, line 11, are we going to add the words "or encumbered" after incurred.

**Motion:** **REP. BROWN** moved that HB 94 be amended so that on page 5, line 11, the words "or encumbered" would be added after incurred.

**Discussion:** **REP. HARRIS** stated that the committee has no idea what that means, it makes no sense. It creates all kinds of weird scenarios.

**REP. BROWN** then rescinded the motion.

**REP. STORY** stated that he agrees, that encumbered is hard to understand. He then explained **Mr. Wade's** intention with these amendments.

**Motion:** REP. GUTSCHE moved that HB 94 DO PASS AS AMENDED.

**Discussion:** REP. BALES stated that he is concerned that the department may go forth with the cleanup with one or two of the liable parties and not make an effort to look for the others. He also asked about the orphan fund, he was led to understand that it is virtually impossible to go through the process of getting into the orphan fund. In passing this are we creating a situation where some people may be overly hurt and others be given a free pass. Maybe some more work needs to be done.

REP. HARRIS stated that REP. BALES is exactly correct, there are serious problems with the orphan fund because it is way to complicated. Maybe this committee should look at this problem. This bill helps because it gets the DEQ of a jam. There is an obligation already for them to engage in a good faith effort to identify all of the parties.

REP. LAIBLE stated that he agrees with REP. BALES and REP. HARRIS and said he was concerned with how we will put pressure on the department in order to find all of the parties. Maybe we should prorate the costs between the responsible parties.

REP. MOOD stated that if the department doesn't know who is involved they can't prorate it. He sited the situation going on in Lockwood. He stated that the DEQ has extraordinary enthusiasm in looking for responsible parties.

REP. HARRIS stated that it has been his experience that they will stop at the owner/operator and not look for anyone else. He gave an example. We are kinda depending on the DEQ to proceed in good faith to try to find all of the responsible parties.

REP. ERICKSON stated that he agrees with REP. MOOD that this bill goes a long way in solving the problem of speed. We have got to get the department away from being paralyzed because there are people out there hurting.

REP. LASZLOFFY asked what happens when the money runs out and the cleanup project is not completed and gave an example. Mr. Mitchell stated that if there is still health, safety and environmental damage potential of the site the State of Montana have funds called the Environmental Quality Protection Fund and the Hazardous Waste CERCLA Account into which money is deposited for this purpose. They could petition the government for the federal superfund dollars.

REP. YOUNKIN added that, under the law as it is, if the department fails to notice any potentially liable person all

liable persons may be able to avoid paying anything. If we don't get everybody out there then the department is paralyzed from doing anything.

**REP. BALES** stated that we should go forward with this but it may be advisable for this committee to look at the requirements for triggering the orphan share.

**REP. YOUNKIN** stated that would probably be a large undertaking.

**REP. GUTSCHE** stated that is probably beyond the scope of this bill although it would be a worthwhile endeavor.

**REP. LAIBLE** stated that he would be more comfortable if there was something in the bill that said that DEQ will make a good faith and effort attempt to find all parties. **REP. YOUNKIN** stated that is already in statute, §75-10-711 and §75-10-712. She also stated that it is sited in the bill on page 2.

**REP. HARRIS** stated that the language referred to relates to the department's authorization to draw from the fund and he thinks that there are some obligations outside of that and the language should state, "nothing herein shall relieve the department of it's obligation to conduct a good faith investigation to identify all potentially liable parties." That would cover the questions.

**REP. YOUNKIN** asked **Sandi Olsen, DEQ**, if there is some other place, either in this bill or in existing law, that requires the department to make it's best efforts to find everybody. **Ms. Olsen** stated that the line which **Larry Mitchell** is the best language.

**REP. WANZENREID** asked **REP. LAIBLE** if this bill addresses the concern that he addressed. **REP. LAIBLE** stated that it does, sort of in a backwards way because you have to reference back to the section. He preferred to have some language in the bill along the lines that **REP. HARRIS** had. **REP. WANZENREID** then asked **Mr. Mitchell** if the proposed language would strengthen the state's position on these kinds of undertakings. **Mr. Mitchell** stated that it is a policy issue of the legislature and a matter of how much faith you have in the department. **REP. WANZENREID** stated that he would recommend that language of that type be put in because he does not have confidence that the DEQ will do it without it.

**Motion:** **REP. HARRIS** moved that HB 94 be amended so that on page 3 a new paragraph 10 will be created to read, "Nothing herein shall relieve the department of it's obligation to conduct a good faith

effort to identify all potentially liable parties." It is potentially redundant but it is designed to send a message.

**Discussion:** REP. STORY asked REP. HARRIS if this language starts to put the department back into the box that they are presently in. REP. HARRIS stated that read as a whole the bill would say, you don't have to identify everyone just do the best job to identify as many as you can.

REP. CURTISS stated that she doesn't believe that we should amend the bill as the department has been struggling with this barrier for a long time and this bill is to remove that barrier. She stated that she feels they have been making good faith efforts.

REP. BALES stated that his concern wasn't as much as the department trying to find everybody out there as it was more of the problem that if they don't the people that they do find should be able to get into orphan share. He is not certain that we need the amendment.

REP. DALE stated that he opposes the amendment because he doesn't believe it is needed.

REP. YOUNKIN stated that she does not believe that the amendment is needed. If this were a problem it would have been flushed out at hearings held previous to the drafting of the bill.

REP. CLANCY called for the question.

*{Tape : 2; Side : A; Approx. Time Counter : 0.1}*

**Vote:** Motion AMENDMENT ON HB 94 failed 7-13 with Erickson, Gutsche, Harris, Hurdle, Laible, Tramelli, and Wanzenried voting aye.

**Vote:** Motion that HB 94 DO PASS AS AMENDED carried unanimously.

**ADJOURNMENT**

Adjournment: 5:00 P.M.

---

REP. CINDY YOUNKIN, Chairman

---

HOLLY JORDAN, Secretary

CY/HJ

**EXHIBIT (nah15aad)**